

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DARRELL W. WHEELER, et al.)	
)	
Plaintiff(s),)	No. C 09-1826 BZ
)	
v.)	ORDER DISMISSING COMPLAINT
)	AS TO ALL REMAINING
HILO MEDICAL CENTER, et al.,)	DEFENDANTS
)	
Defendant(s).)	
_____)	

Plaintiffs' request to file a second amended complaint (see Doc. No. 56) is **DENIED**. Plaintiffs already received a chance to amend their complaint (see Doc. No. 6, 9) and plaintiffs' first amended complaint failed to address the concerns outlined by the Court in its Order Dismissing Complaint with Leave to Amend, dated May 13, 2009. (Doc. No. 6.) The Court may deny amendment under Rule 15(a) "when amendment would be clearly frivolous, unduly prejudicial, cause undue delay or a finding of bad faith is made." United Union of Roofers v. Ins. Co. of America, 919 F.2d 1398, 1402 (9th Cir. 1990). A Court may also deny amendment if that amendment would be futile, or if there have been previous

1 unsuccessful attempts to cure deficiencies. See Foman v.
2 Davis, 371 U.S. 178, 182 (1962). The Court has the discretion
3 to determine whether the presence of any of these elements
4 justifies refusal of a request to amend the complaint; this
5 discretion is particularly broad where plaintiff has
6 previously amended the complaint. Ascon Properties, Inc. v.
7 Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989).

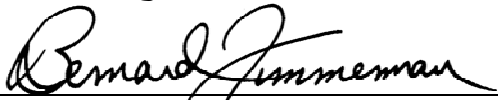
8 Based on the Court's understanding of the facts of this
9 case, permitting plaintiffs to further amend their complaint
10 would be futile. Plaintiffs will not be able to cure the
11 deficiencies in their complaint, inasmuch as their first
12 amended complaint is substantively unchanged from
13 the original complaint with respect to all of plaintiffs
14 claims and jurisdictional allegations. Specifically, it
15 appears that plaintiffs claims may be time-barred, but even if
16 plaintiffs overcame this hurdle, their action could not
17 proceed in this Court since they have not alleged any activity
18 that occurred in California or otherwise suggested any basis
19 for this Court to acquire personal jurisdiction over the
20 remaining defendants. "Personal jurisdiction" means the Court
21 has power to render a judgment that commands defendants'
22 obedience or that imposes obligations on defendants
23 enforceable by other courts. See Burnham v. Superior Court,
24 495 U.S. 604, 610-11 (1990). From the allegations in both the
25 original as well as the first amended complaint, defendants
26 resided at all relevant times in Hawaii and all of the alleged
27 activity took place in Hawaii.

28 Because defendants are not present in California, they

1 must have "certain minimum contacts [with California] such
2 that the maintenance of the suit does not offend traditional
3 notions of fair play and substantial justice." Int'l Shoe Co.
4 v. Washington, 326 U.S. 310, 316-17 (1945). There is nothing
5 to suggest that defendants have the requisite minimum contacts
6 in California. Plaintiffs have not alleged facts
7 demonstrating that the defendants "purposefully availed"
8 themselves of the privileges of conducting activities in
9 California by showing that they engaged in conduct aimed at or
10 having effect in California. Lee v. City of Los Angeles, 250
11 F.3d 668, 692 (9th Cir. 2001). When this issue was discussed
12 at the case management conference, plaintiff Ellis suggested
13 that some defendants might consent to jurisdiction in this
14 district. None have.

15 Plaintiff Ellis faces another hurdle in that she has
16 failed to timely serve defendants pursuant to Rule 4(m) of the
17 Federal Rules of Civil Procedure. Given Ms. Ellis's failure
18 to serve, and given that neither Ms. Ellis nor Mr. Wheeler
19 have alleged facts demonstrating that any of the defendants
20 have sufficient contacts with California to require them to
21 defend themselves in this court, the Court finds that further
22 pursuance of this action would be futile. Accordingly, this
23 action is **DISMISSED** as to all remaining defendants.

24 Dated: October 6, 2009



Bernard Zimmerman
United States Magistrate Judge

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